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14892

RECORDATION NO. _____ FILE 1425

FEB 05 1986 - 11 35 AM

February 3, 1986

No. 6-036A014
Date FEB 5 1986
Fee \$ 10.00

ICC Washington, D. C.

INTERSTATE COMMERCE COMMISSION
HAND DELIVER

Interstate Commerce Commission
Constitution Avenue and 12th Street, N.W.
Washington, D.C. 20423

Attention: Mildred Lee, Office of the Secretary,
Public Record Section, Room 2303

Dear Ms. Lee:

Enclosed for filing and recording in your office are three (3) originally executed and notarized copies of a Lease of Railroad Equipment, dated as of January 30, 1986 by and between Consolidated Rail Corporation and United States Trust Company and the requisite fee payable to the Interstate Commerce Commission in the amount of \$10.00. The parties to the Lease are:

Consolidated Rail Corporation (Lessee)
1310 Six Penn Center Plaza
Philadelphia, Pennsylvania 19103

United States Trust Company (Lessor)
40 Court Street
Boston, Massachusetts 02108

The equipment which is the subject of the Lease is described in Schedule A attached thereto.

Please provide the representative of this firm who is delivering this package to you with a receipt of some sort for the documents described in the above.


Hugh Walker
Deputy

PEPPER, HAMILTON & SCHEETZ

Interstate Commerce Commission
February 3, 1986
Page Two

Thanking you in advance for your attention to this
matter, I am

Sincerely,



Carol G. Simcox
Legal Assistant

CGS/dtj

Enclosures

cc: Paula G. Pressman, Esquire
John W. McLamb, Jr., Esquire

14892
RECORDED IN _____ FILED 148

FEB 05 1986 -11 35 AM

INTERSTATE COMMERCE COMMISSION

LEASE OF RAILROAD EQUIPMENT

Dated as of January 30, 1986

between

CONSOLIDATED RAIL CORPORATION

and

UNITED STATES TRUST COMPANY

LEASE OF RAILROAD EQUIPMENT dated as of January 30, 1986 (the "Lease"), between CONSOLIDATED RAIL CORPORATION, a Pennsylvania corporation (the "Lessee"), and United States Trust Company, a Massachusetts trust company (the "Lessor").

WHEREAS the Lessee is entering into various Purchase Agreements set forth on Schedule E hereto (the "Purchase Agreement") with various builders-vendors (the "Builder"), wherein the Builder has agreed to manufacture, sell and deliver to the Lessee the units of railroad equipment described in Schedule A hereto (the "Equipment"); and

WHEREAS Lessee hereby assigns to Lessor, its rights, title and interest in and to such Purchase Agreement and Equipment, and by execution of this Agreement, Lessor will consent to the assignment effected hereby;

WHEREAS Lessee shall remain liable for all of the obligations under the Purchase Agreement, other than the obligations regarding payment to the Builder;

WHEREAS Lessee represents and warrants that to the best of its knowledge, the Purchase Agreement will be in full force and effect as of the date of Acceptance of any Unit;

WHEREAS the obligation of Lessor to purchase the Unit is conditioned upon Lessee's acceptance of such Unit;

WHEREAS the Lessee desires to lease such number of units of Equipment as are delivered and accepted and settled for under the Purchase Agreement (the "Units") at the rentals and for the terms and upon the conditions hereinafter provided;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions:

Section 1. Net Lease. This Lease is a net lease and except as expressly provided herein the Lessee shall not be entitled to any abatement of rent or additional rent, or setoff against or recoupment or reduction of rent or additional rent, including, but not limited to, abatements, setoffs, reductions or recoupments due or alleged to be due by reason of any past, present or future claims or counterclaims of the Lessee against the Lessor under this Lease or the Purchase Agreement, or against the Builder or otherwise. The Lessee's obligations hereunder, including its obligations to pay all rentals, additional rentals and other amounts hereunder, shall be absolute and unconditional under any and all circumstances, and, except as otherwise expressly provided herein, this Lease shall not terminate, nor shall the respective obligations of the Lessor or the Lessee be

otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or any bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. So long as no Event of Default exists hereunder, if and only if Lessor or anyone validly claiming through it shall interfere with Lessee's possession and use of any Unit in accordance with the terms of the Lease, and provided that Lessee shall have promptly notified Lessor in writing of the interference and such interference shall be continuing for a period of twenty (20) days, Lessee's obligation to pay rent with respect to such Unit hereunder shall abate for so long as such interference continues. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof.

Section 2. Delivery and Acceptance of Units. The Lessor hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the Purchase Agreement. The Lessor will cause each Unit to be delivered to the Lessee at the point or points within the United States of America at which such Unit is delivered to the Lessor under the Purchase Agreement. Upon such delivery, the Lessee will cause an employee of the Lessee to inspect the same and, if such Unit is found to be acceptable, to accept delivery of such Unit, and the Lessee shall timely execute and deliver to the Lessor a certificate of acceptance (the "Certificate of Acceptance") in the form annexed hereto as Schedule C, whereupon, except as provided in the next sentence hereof, such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease. The delivery, inspection and acceptance hereunder of any Unit of Equipment after December 31, 1986 shall be null and void and ineffective to subject such Unit to this Lease or to constitute acceptance thereof on behalf of the Lessor for any purpose whatsoever.

Section 3. Rentals. The Lessee agrees to pay to the Lessor, as rental for each Unit, such amount as is set forth in Schedule D hereinafter referred to as "Basic Lease Rental" as is applicable for such Unit.

If any of the Rental Payment Dates referred to above is not a business day the rental payment otherwise payable on such date shall be payable on the next succeeding business day. The term "business day" as used herein means a calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in Pennsylvania and Massachusetts are authorized or obligated to remain closed.

In the event of a tax law change enacted and effective prior to the delivery and acceptance of a Unit, Lessee shall not be obligated to enter into this Lease with respect to such Unit. Lessor shall notify Lessee of any such tax law change and resulting adjustment to the Basic Lease Rental prior to acceptance and delivery of any affected Unit.

Section 4. Term of Lease. The term of this Lease as to each Unit shall begin on the date of acceptance of such Unit hereunder and, subject to the provisions of Sections 7 and 10 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to Section 3 hereof. The obligations of the Lessee hereunder (including, but not limited to, the obligations under Sections 6, 7, 9, 14 and 16 hereof) shall survive the expiration or termination of the term of this Lease and the full payment of all amounts payable under this Lease, as shall the obligations of the Lessor under Sections 6, 7, 9, 14 and 16 hereof.

Section 5. Identification Marks.

(a) The Lessee will cause each Unit to be kept numbered with the identification number set forth in Schedule A hereto, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, with identification markers provided by Lessor, with appropriate changes thereof as from time to time may be required by law, in the opinion of the Lessor, in order to protect the Lessor's title to and interest in such Unit and the rights of the Lessor under this Lease. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked and will replace promptly any such markings which may be removed, defaced or destroyed. The Lessee will not change the identification number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Lessor and duly filed and deposited by the Lessee in all public offices where this Lease shall have been filed and deposited and (ii) the Lessee shall have furnished the Lessor an opinion of counsel to the effect that such statement has been so filed and deposited, that such filing and deposit will protect the Lessor's rights in such Units and that no other filing, deposit or giving of notice with or to any federal, state or local government or agency thereof is necessary to protect the rights of the Lessor in such Units.

(b) Except as provided in the immediately preceding paragraph, the Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership; provided, however, that the Units may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates.

Section 6. General Tax Indemnity

(a) Indemnity. The Lessee agrees to pay, and to indemnify and hold the Lessor harmless, on an after-tax basis, from all taxes, assessments, fees and charges together with any penalties, fines, additions to tax or interest thereon, however imposed, whether levied or imposed upon the Lessor by any Federal, state, District of Columbia or local government or governmental subdivision thereof, upon or with respect to, any Unit; the purchase, ownership, delivery, leasing, re-leasing, subleasing, possession, use, operation, maintenance, repair, condition, transfer of title, return or other disposition thereof; the indebtedness with respect thereto; the rentals, receipts or earnings arising therefrom; or this Agreement or any payment made pursuant to this Agreement (all such taxes, assessments, fees, charges, penalties, fines, additions to tax and interest imposed hereafter referred to as "General Taxes"); excluding, however: (i) United States Federal income taxes and any state, District of Columbia or local net income taxes or other similar taxes measured by net income or net earnings; (ii) any claim for penalties, fines or interest resulting from an act, omission or misrepresentation of Lessor or anyone acting under, through, or on behalf of Lessor (other than Lessee pursuant to this Section 6); and (iii) any General Taxes imposed upon Lessor as a result of the voluntary transfer of title, sale, or other disposition of the Units.

(b) Payment. All amounts payable to the Lessor pursuant to this Section 6 shall be paid promptly in immediately available funds and in any event within 15 days after receipt by the Lessee of written demand therefor from the Lessor requesting reimbursement or indemnification for any General Taxes, on the basis that the Lessor has paid or within 15 days expects to pay such amounts.

(c) Contest. If any proceeding (including the written claim or written threat of such proceeding) is commenced against the Lessor for any General Taxes, the Lessor shall promptly notify the Lessee. Lessor agrees to confer with Lessee, if so requested, and agrees to take such action in connection with contesting any such proceeding as the Lessee shall reasonably request and at Lessee's sole expense provided, however, that:

(i) within 30 days after notice by the Lessor to Lessee of such proceeding the Lessee shall request in writing that it be contested;

(ii) Lessor, at its sole option, may forego any and all administrative appeals, proceedings, hearings and conferences with any applicable agency with respect to any such claim, accept the findings of such agency or otherwise terminate any audit or other administrative proceedings and may, at its sole option, either pay the General Taxes and sue for a refund in such court as the Lessor shall elect, or contest the proceeding in any appropriate forum; provided, however, that Lessee shall have no obligation to indemnify Lessor for any such General Taxes, if as a result of Lessor's foregoing of any such administrative appeals, proceedings, hearings or conferences, Lessor shall lose the right to contest the merits of such imposition or levies; and

(iii) prior to taking such action, the Lessee at its expense shall furnish the Lessor in a timely manner with an opinion of independent tax counsel satisfactory to the Lessor to the effect that there exists a reasonable likelihood of the Lessor's prevailing on the merits in the contest of such proceeding;

it being understood, however, that in no event shall the Lessor be required to commence any proceeding pursuant to this paragraph (c) unless the Lessee shall have provided the Lessor with sufficient funds on an interest-free basis to pay such General Taxes as are required to be paid so to proceed.

(d) Costs of Contest. The Lessee shall indemnify the Lessor in a manner satisfactory to the Lessor for any liability or loss which the Lessor may incur from time to time as a result of participating in any proceeding described in paragraph (c) of this Section 6. The indemnification shall be an amount which, on an after-tax basis, shall be equal to all costs and expenses which the Lessor may incur from time to time in connection with any such proceeding or any appeal thereof, including, without limitation, reasonable attorneys' and accountants' fees and disbursements, and the amount of any interest, tax or penalty which may ultimately be due and payable as a result of any such proceeding. Such amounts shall be payable within 15 days after the presentation to Lessee of appropriate documentation in reasonable detail of such costs, expenses, interest, taxes or penalties and the demand for payment thereof.

(e) Refund. If the Lessor shall obtain a refund of all or any part of such General Taxes paid by the Lessee or with the Lessee's advance of funds, the Lessor shall pay to the Lessee the amount of such refund, subject to the Lessee making the indemnification in paragraph (c) of this Section 6. If in addition to such refund the Lessor shall receive an amount representing interest on the amount of such refund, the Lessee shall be paid that proportion of such interest which is fairly attributable to General Taxes paid by the Lessee prior to the receipt of such refund or with an advance provided by the Lessee.

(f) Reports. In case any report or return is required to be made relating to any General Taxes, the Lessee will, at its own expense, and where applicable, as Lessor's agent, make and timely file such reports and returns where permitted to do so under applicable rules and regulations (the interest of the Lessor in the Units to be shown in a manner satisfactory to the Lessor) or, where not so permitted, notify the Lessor of such requirement and at Lessee's expense will prepare and deliver such reports to the Lessor within a reasonable time prior to the time such reports are to be filed. Any expenses incurred by the Lessor with respect to the submission or execution of any such report or return, or the filing or recording thereof, shall be reimbursed to the Lessor by the Lessee in the manner provided in paragraph (d) of this Section 6. Lessor agrees to notify Lessee of any reporting or return requirements of which it is aware in the ordinary course of its principal business (other than reports or returns required in the railroad industry or for property or sales and use taxes) and to provide Lessee, in a timely manner, all information in the possession of Lessor which is reasonably required for the preparation and filing of such report or return.

Section 7. Maintenance; Casualty Occurrences; Insurance.
The Lessee, at its own expense and in a manner no less thorough and complete than is the prudent industry standard for Class I line-haul railroads, will maintain, service and adhere to a preventive maintenance schedule with respect to each Unit which will include testing, repair and overhaul so that each Unit will remain (a) in as good operating condition as when delivered (ordinary wear and tear excepted), (b) in compliance with any and all applicable laws and regulations, and (c) suitable for immediate purchase or lease and immediate regular use in main line freight service by a Class I line-haul railroad. In no event shall any Unit be maintained on a basis less frequent than the maintenance basis employed as of the date hereof by the Lessee for any similar equipment.

In the event that any Unit shall be or become: lost, stolen, destroyed or irreparably damaged, or in the opinion of Lessee worn out from any cause whatsoever, permanently returned to the Builder pursuant to any patent indemnity provision of the Purchase Agreement, or taken or requisitioned by condemnation or otherwise by the United States Government or by any other government or governmental entity resulting in loss of possession by the Lessee for period of 90 consecutive days (all such occurrences being herein-after called "Casualty Occurrences"), prior to the return of such Unit in the manner set forth in Section 14 hereof, the Lessee shall promptly (but in any event within 60 days after such Casualty Occurrence) and fully notify the Lessor in writing, with respect thereto. If by the later of: (i) the Rental Payment Date next succeeding such casualty occurrence or (ii) the 90th day following such casualty occurrence (and, for the purposes of determining the date of any Casualty Occurrence, the same shall be deemed, for the purposes of this paragraph, to have occurred on the date of the loss, theft, destruction, irreparable damage, wearing out, or any component part of any Unit returned to the

manufacturer pursuant to any patent indemnity agreement which return would render such Unit permanently inoperable, or requisition if the same shall have continued for at least ninety consecutive days), then Lessee shall pay to the Lessor an amount equal to the rental payment or payments in respect of such Unit then due and payable or accrued to such date (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of the Rental Payment Date on or next succeeding the date of such Casualty Occurrence in accordance with Schedule B hereto referred to below, together with, if such payment is made pursuant to clause (ii) above, interest on the Casualty Payment from the Rental Payment Date preceding such 90th day to such 90th day, at a rate equal to nine and three-quarters percent (9 3/4%) interest per annum. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft, complete destruction or permanent return to the Builder of such Unit) the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, at the best price obtainable on an "as is, where is" basis and the Lessee may be a purchaser of such Unit (unless such Unit is declared worn out by Lessee) and shall notify the Lessor prior to any such purchase by the Lessee. Provided that the Lessee has previously paid the Casualty Value to the Lessor and provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor.

The Casualty Value of each Unit as of any Rental Payment Date shall be that amount for that Unit as is set forth in Schedule B hereto opposite such date.

Whenever any Unit shall suffer a Casualty Occurrence after the final payment of rent in respect thereof is due pursuant to Section 3 hereof and before such Unit shall have been returned in the manner provided in Section 14 hereof, the Lessee shall promptly (as provided above) and fully notify the Lessor in writing within 30 days with respect thereto and, except as provided in Section 14 hereof, pay to the Lessor an amount equal to the Casualty Value of such Unit, which shall be an amount equal to the amount for such Unit on the last Rental Payment Date. Upon the making of any such payment by the Lessee in respect of any Unit (except in the case of the loss, theft or complete destruction of such Unit or return to the

Builder of such Unit), the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence, or any component thereof, at the best price obtainable on an "as is, where is" basis and the Lessee may be a purchaser of such Unit (unless such Unit is declared worn out by Lessee) and shall notify the Lessor prior to any such purchase by the Lessee. Provided that the Lessee has previously paid the Casualty Value to the Lessor and provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor.

In the event of the requisition (other than a requisition which constitutes a Casualty Occurrence) for use by the United States Government or by any other government or governmental entity (hereinafter collectively called the "Government") of any Unit during the term of this Lease, all of the Lessee's obligation to pay rent) under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred, except that if such Unit is returned by the Government at any time after the end of the term of this Lease, the Lessee shall be obligated to return such Unit to the Lessor pursuant to Section 11 or 14 hereof, as the case may be, promptly upon such return by the Government rather than at the end of the term of this Lease, but the Lessee shall in all other respects comply with the provisions of said Section 11 or 14, as the case may be, with respect to such Unit. All payments received by the Lessor or the Lessee from the Government for the use of such Unit during the term of this Lease shall be paid over to, or retained by, the Lessee, provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing; and all payments received by the Lessor or the Lessee from the Government for the use of such Unit after the term of this Lease shall be paid over to, or retained by, the Lessor.

Except as hereinabove in this Section 7 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit from and after delivery and acceptance hereof by the Lessee hereunder.

The Lessee will, at all times prior to the return of the Units to the Lessor, at its own expense (including the payment of all deductible amounts), cause to be carried and maintained casualty insurance and public liability insurance in respect of the Units at the time subject hereto, against such risks, in such amounts and on such terms and conditions as are satisfactory to the Lessor and, in any event, comparable in amounts and against risks customarily insured against by the Lessee in respect of similar equipment owned by it, but in no event shall such coverage

be for amounts or against risks less than the total value of the Equipment or Casualty Value Schedule, whichever is greater, or less than the prudent industry standard for Class I line-haul railroads. All policies with respect to such insurance shall provide for payments to the Lessor, as additional named insured or loss payee, as its interests may appear, shall provide for at least 30 days' prior written notice by the insurance carrier to the Lessor in the event of cancellation, expiration or amendment (and the Lessee shall provide 30 days' prior written notice to the Lessor in any such event), shall include waivers by the insurer of all claims for premiums against the Lessor, and shall provide that losses are payable notwithstanding, among other things, any act of negligence of the Lessee, or the Lessor, more hazardous use or occupation of the Units than that permitted by such policies, any breach or violation by the Lessee or the Lessor, of any warranty, declaration, condition or other provision contained in any such policy, or foreclosure, notice of sale or any other proceeding in respect of the Units, or any change in the title to or ownership of any of the Units. Each such insurance policy shall expressly provide that all of the provisions thereof except the limits of liability (which shall be applicable to all insureds as a group) and liability for premiums (which shall be solely a liability of the Lessee) shall operate in the same manner as if they were a separate policy covering each insured and shall be primary without right of contribution from any insurance carried by the Lessor. The Lessee shall, not later than June 15 of each year, commencing June 15, 1986, furnish to the Lessor a certificate of an independent insurance broker acceptable to the Lessor evidencing the maintenance of the insurance required hereunder and shall furnish certificates evidencing renewal 15 days prior to the expiration date of such policy or policies. In the event that the Lessee shall fail to maintain insurance as herein provided, the Lessor may at its option on five business days' prior written notice to the Lessee provide such insurance (giving the Lessee prompt written notice thereof) and, in such event, the Lessee shall, upon demand from time to time, reimburse the Lessor for the cost thereof together with interest on the amount of such cost from the date of payment thereof at a rate per annum equal to the "prime" or "base" rate of interest announced from time to time by United States Trust Company for corporate borrowers of the highest credit rating. If the Lessor shall receive any insurance proceeds or condemnation payments in respect of a Unit suffering a Casualty Occurrence, the Lessor shall, subject to the Lessee's having made payment of the Casualty Value as described herein in respect of such Unit and provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing, pay such proceeds or condemnation payments to the Lessee up to an amount equal to the Casualty Value with respect to a Unit paid by the Lessee and any balance of such proceeds or condemnation payments shall remain the property of the Lessor (except to the extent such balance includes a pro rata share of the proceeds with respect to a Casualty of any readily removable property of the Lessee). All insurance proceeds received by the Lessor in respect of any Unit

not suffering a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Lessor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired to its original condition (wear and tear excepted), provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing. Any amounts paid or payable to Lessor under the foregoing insurance shall not be reduced on account of any amount which may be paid or payable to Lessor by reason of claims made under any other policies of insurance under which Lessor is a beneficiary or claimant. Notwithstanding the foregoing, the Lessor shall in no event be obligated to participate in the funding of any self-insurance program of the Lessee.

Section 8. Reports. On or before April 30 in each year, commencing with a calendar year 1987, the Lessee will automatically furnish to the Lessor a certificate signed by the Chief Mechanical Officer of the Lessee (a) setting forth as at the preceding December 31 the amount, description and numbers of all Units then leased hereunder, the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year or are then undergoing repairs (other than running repairs) or then withdrawn from use pending a determination of whether a Casualty Occurrence has occurred or pending such repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as the Lessor may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by Section 5 hereof have been preserved or replaced. The Lessor, at its sole expense, shall have the right by its agents to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor may request during the continuance of this Lease.

Lessee agrees to furnish Lessor (a) as soon as available, and in any event within 120 days after the last day of each fiscal year of Lessee, a copy of the consolidated balance sheet of Lessee as of the end of such fiscal year, certified by an independent certified public accounting firm of recognized standing, each on a comparative basis with corresponding statements for the prior fiscal year; (b) within 45 days after the last day of each fiscal quarter of Lessee (except the last such fiscal quarter), a copy of the balance sheet as of the end of such quarter, and statement of income and retained earnings of Lessee and its consolidated comparative basis with the corresponding period of the prior year, all in reasonable detail; (c) contemporaneously with its transmittal to each stockholder of Lessee, all such other financial statements and reports as Lessee shall send to its stockholders when Lessee's stock becomes publicly traded; (d) as soon as available to Lessee, the notice of any material adverse adjustment resulting from any audit of the books and/or records of Lessee by any taxing authority having jurisdiction over Lessee; and (e) such additional financial information as Lessor may reasonably request concerning Lessee.

The Lessee shall promptly notify in writing the Lessor of any occurrence of an Event of Default or other event which after notice or lapse of time or both would become an Event of Default, specifying such Event of Default and all such events and the nature and status thereof.

Section 9. Disclaimer of Warranties; Compliance with Laws and Rules; Indemnification. THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN, INSTALLATION, SUITABILITY, OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR USE BY LESSEE OR AS TO THE LESSEE'S RIGHT TO QUIET ENJOYMENT THEREOF (EXCEPT AS TO ACTS OF THE LESSOR OR ANYONE VALIDLY CLAIMING THROUGH IT), OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT, EXCEPT THAT LESSOR REPRESENTS IT HAS VALID TITLE THERETO, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee, its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have against the Builder; provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such

claims and rights. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, sub-leasing, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

Lessor agrees that the Lessee shall have the benefit and assignment of any and all manufacturer's or Builder's warranties, patent indemnities and other indemnities issued on the Equipment or any manufacturer's or Builder's servicing agreements with respect to the Equipment; provided, however, that Lessee's sole remedy for the breach of any such warranty, indemnification or representation shall be against the manufacturer or Builder, and not against the Lessor or any assignee of the Lessor, nor shall any such breach have any effect whatsoever on the rights and obligations of either party with respect to this Lease. Lessor shall, at Lessee's expense, assist Lessee in the manner reasonably necessary for Lessee to enforce any manufacturer or Builder warranty, indemnity or representation.

The Lessee agrees, for the benefit of the Lessor, to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all applicable laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads, of applicable, and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units, and in the event that, prior to the expiration of this Lease, such laws or rules require any alteration, replacement, addition or modification of or to any part on any Unit, the Lessee shall promptly notify Lessor and will conform therewith at its own expense (any such additions which are readily removable without material damage to the Units shall become the property of the Lessee if their removal would not adversely and materially affect the value or warranty of the Units and their installation was required by law for limited special use and not general operation); provided, however, that the Lessee may at its own expense, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor (which shall be promptly given to Lessee), adversely affect the

property or right of the Lessor under this lease. The Lessee, at its own cost and expense, may from time to time make such other additions, modifications and improvements to the Units during the term of this Lease as are readily removable without causing material damage to the Units (and do not adversely and materially affect the value or warranty of the Units). The additions, modifications and improvements made by the Lessee under the preceding sentence shall be owned by the Lessee, except to the extent such additions, modifications or improvements are described in the following sentence. Any and all parts installed on and additions and replacements made to any Unit (i) which are not readily removable without causing material damage to such Unit and were installed or were added to such Unit in contravention of the provisions contained hereinabove, (ii) the cost of which is included in the Lessor's basis for such Unit, (iii) in the course of ordinary maintenance of the Units or (iv) which are required for the operation or use of such Unit by the interchange rules of the Association of American Railroads or by the regulations of the Interstate Commerce Commission, the United States Department of Transportation or any other regulatory body, shall constitute accessions to such Unit and full ownership thereof free from any lien, charge, security interest or encumbrance (except for additions required by law for limited special use and not general operation which are readily removable without causing material damage to the Units and without adversely and materially affecting the value of the Units) shall immediately be vested in the Lessor.

The Lessee agrees to indemnify, protect and hold harmless the Lessor from and against all losses, damages, injuries, liabilities, claims (including without limitation claims for strict liability in tort) and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, counsel fees and expenses, patent, trademark and copyright liabilities, penalties and interest, arising out of or as the result of the entering into or the performance of or the occurrence of a default, an event of default or an Event of Default under this Lease or any sublease entered into pursuant to Section 12 hereunder, the ownership of any Unit, the manufacture, ordering, acquisition, use, operation, condition, purchase, sublease, delivery, acceptance, rejection, storage or return of any Unit or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person, except as otherwise provided in Section 14 of this Lease. The indemnities arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Lease or the expiration or termination of the term of this Lease.

Except as otherwise expressly provided in Section 14, the Lessee shall bear the responsibility and risk for, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any or all of the Units of Equipment.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required filing date (or, to the extent permissible, file on behalf of the Lessor) any and all reports (other than tax returns) to be filed by the Lessor with any federal, state or other regulatory authority by reason of the ownership by the Lessor of the Units, or the leasing thereof to the Lessee.

Section 10. Default. If, during the continuance of this Lease, one or more of the following events (each such event being herein called an "Event of Default") shall occur:

(A) default shall be made in payment of any amount provided for in Section 3 or 7 hereof, and such default shall continue for five (5) business days;

(B) the Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or any interest herein, or of the right to possession of the Units;

(C) default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein and such default shall continue for 30 days after the earlier of (i) written notice from the Lessor to the Lessee specifying the default and demanding that the same be remedied or (ii) the date on which such default shall first become known to any officer of the Lessee;

(D) a petition for reorganization under Title 11 of the United States Code, as now constituted or as hereafter amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceeding in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees, within 60 days after such petition shall have been filed and otherwise in accordance with the provisions of 11 U.S.C. § 1168, or any successor provision as the same may hereafter be amended; or

(E) any other proceeding shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any

readjustments of such obligations), and, unless such proceeding shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been and shall not continue to have been duly assumed in writing pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee or for the property of the Lessee in connection with any such proceeding in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such a trustee or trustees or receiver or receivers, within 60 days after such proceeding shall have been commenced;

(F) any representation, warranty or certification made by Lessee under this Lease or in any Lease Supplement or in any document or certificate furnished Lessor or any assignee of Lessor in connection herewith or pursuant hereto shall prove to be untrue or incorrect when made, or shall be breached.

then, in any such case, the Lessor, at its option, may:

(a) proceed by appropriate court action or actions either at law or in equity to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof including net after-tax losses of Federal, state and local income tax benefits to which the Lessor would otherwise be entitled under this Lease; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Lessor may by its agents, subject to compliance with all mandatory requirements of law, enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess, sell, operate, lease to others and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever and without any duty to account to the Lessee for such action or inaction or for any proceeds arising therefrom (Lessor shall be permitted to enter such premises upon notice and Lessee warrants that it shall cooperate with such entering); but the Lessor shall, nevertheless, have a right to recover (by acceleration of rent and other amounts due hereunder) from the Lessee any and all amounts which under the terms of this Lease may then be due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full

rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) including but not limited to any amounts due the Lessor pursuant to Section 6 and Section 16 provided, however, that Lessor shall not be relieved of its obligation, under Section 6(c) or Section 16(h) except as specifically provided therein and, in addition, to recover forthwith from Lessee, as damages for loss of the bargain and not as a penalty, the following amount: a sum, with respect to each Unit, equal to (A) the present value (calculated on the basis of a 8.5 percent per annum discount rate), at the time of such termination, of the entire unpaid balance of all rental payments for such Unit which would otherwise have accrued hereunder from the date of such termination up to the end of the term of this Lease, plus (B) any amounts which would be due to Lessor pursuant to transactions which, in connection with Lessor's sale, rental, or other disposition of Lessor's interest in any Unit after the occurrence of an Event of Default, result in a Loss (and, for the purposes of this paragraph, any such disposition shall be deemed to have been caused by an Act of the Lessee) and Lessor shall be entitled to payment, as liquidated damages, pursuant to this clause (B), as Lessor would be entitled to as indemnification pursuant to Sections 6 and 16 of this Lease, notwithstanding anything to the contrary contained herein; provided, however, that in the event the Lessor shall have entered into a contractual rental arrangement with a third party relating to the then remaining term of this Lease, the amounts due the Lessor pursuant to this clause shall be computed based upon the facts and circumstances of such actual transaction; appropriate refunds of any amounts previously collected from the Lessee which would be inconsistent with the amounts which would be due in the context of the facts and circumstances of such actual rental arrangement will be immediately repaid to the Lessee and if any additional amounts would be due the Lessor pursuant to this clause based upon the facts and circumstances of such actual rental arrangement such amounts will be immediately paid to the Lessor.

In addition, the Lessee shall be liable, except as otherwise provided above, for any and all unpaid amount due hereunder before, during or after the exercise of any of the foregoing remedies and for all reasonable attorneys' fees and other costs and expenses

incurred by reason of the occurrence of any Event of Default or the exercise of the Lessor's remedies with respect thereto, including all costs and expenses incurred in connection with the return of any Unit.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited by law. The Lessee hereby waives any and all claims against the Lessor and its agent or agents for damages of whatever nature in connection with any retaking of any Unit in any reasonable and lawful manner. The Lessor and the Lessee agree that the Lessor shall be entitled to all rights (such rights being fundamental to the willingness of the Lessor to enter into this Lease) provided for in §1168 of the Bankruptcy Act or any comparable provision of any amendment thereto, or of any other bankruptcy act, so that the Lessor shall have the right to take possession of the Equipment upon an Event of Default under this Lease regardless of whether the Lessee is in reorganization.

No failure by the Lessor to exercise, and no delay by the Lessor in exercising, any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege by the Lessor preclude any other or future exercise thereof, or the exercise of any other right, power or privilege by the Lessor preclude any other or future exercise thereof, or the exercise of any other right, power or privilege.

Section 11. Return of Units Upon Default. If this Lease shall terminate pursuant to Section 10 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. Each Unit so delivered shall be in the condition required by the first paragraph of Section 7 hereof. For the purpose of delivering possession, the Lessee shall:

(a) permit the Lessor to store such Units on such tracks or storage facilities of the Lessee or any of its affiliates as the Lessor reasonably may designate, at the risk of the Lessee without charge for insurance, rent or storage until such Units have been sold, leased or otherwise disposed of by the Lessor; provided, however, that such storage without charge shall not extend beyond the latest storage date specified in Section 14 hereof; and

(b) transport the same to any place on the lines of railroad operated by the Lessee or any of its affiliates or to any connecting carrier for shipment, all as directed by the Lessor.

Except as specifically provided herein, the assembling, delivery, storage, insurance and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and, upon application to any court of

equity having jurisdiction, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will, at its own expense, maintain and keep the Equipment in the condition required by the first paragraph of Section 7 hereof and will permit and cooperate with the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of any such Unit, to inspect the same in a reasonable manner consistent with current industry practice. All rent and per diem charges earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 60 days after such termination, the Lessee shall, in addition, pay to the Lessor for each day thereafter an amount which is 1/90th of the rental payment as contained in Schedule D.

Without in any way limiting the foregoing obligations of the Lessee under this Section 11, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

Section 12. Assignment; Possession and Use. So long as no Event of Default exists hereunder, this Lease and any Schedules hereto and any extension of the Lease may not be assigned, sold or transferred in whole or in part by the Lessor, or any successor or assignee or successor assignee of Lessor, without the prior written consent of the Lessee, such consent not to be unreasonably withheld; provided, however, Lessor may assign, sell or transfer this Lease and all the rights and obligations of Lessor hereunder to its parent or any wholly owned subsidiary or wholly owned affiliate of its parent without Lessee's consent or to a single debt source for security purposes only in reference to this Lease ("Assignee") with Lessee's prior consent, which consent shall not be unreasonably withheld. Any assignee of Lessor shall have and be entitled to exercise any and all discretions, rights and powers of Lessor and all references to Lessor in this Lease and/or any Schedules duly attached shall include such assignee; but except as set forth above the assignee shall not be chargeable with any obligations or liabilities of Lessor with respect to this Lease or the Equipment, all such obligations and liabilities remaining chargeable to Lessor. Subject to the provisions of this section, in the event Lessor does assign this Lease, Lessor shall notify Lessee of the assignment in writing. All the rights of the Lessor hereunder shall inure to the benefit of the Lessor's successors and assigns.

Except as expressly provided for in this Section 12, Lessee shall not assign, transfer or encumber its rights and obligations

hereunder without the prior written consent of the Lessor, which consent shall not be unreasonably withheld.

So long as no Event of Default exists hereunder, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease and, without the prior written consent of the Lessor, upon notification the Lessee may sublease the Units to, or permit their use by, a user incorporated in the United States of America (or any State thereof or the District of Columbia), upon lines of railroad owned or operated by the Lessee or such user or by a railroad company or companies incorporated in the United States of America (or any State thereof or the District of Columbia), or over which the Lessee, such user, or such railroad company or companies have trackage rights or rights for operation of their trains, and upon the lines of railroad of connecting and other carriers in the usual interchange of traffic or in through or run-through service, but only upon and subject to all the terms and conditions of this Lease; provided, however, that the Lessor's prior written consent, not to be unreasonably withheld, must be obtained for any sublease that is for a term longer than six months; provided, further, however, that the Lessee shall not sublease or permit the sublease or use of any Unit to service involving operation or maintenance outside the United States of America; and provided, further, however, that any such sublease or use shall be consistent with the provisions of Section 16 hereof. No such assignment or sublease shall relieve the Lessee of its obligations, liabilities or duties hereunder which shall be and remain those of a principal and not a surety.

Section 13. Lessee's Options Upon Expiration.

(a) Lessee's Renewal Option. If (i) no Event of Default shall have occurred and be continuing and (ii) this Lease shall not have been earlier terminated, Lessee shall be entitled, at its option upon written notice to Lessor, as hereinafter provided, to renew this Lease with respect to any or all Units of Equipment then subject to this Lease for Two (2) Renewal Terms of twelve (12) months each and as many additional Renewal Terms of twelve (12) months so long as such Renewal Terms do not exceed eighty (80%) percent of the useful life of the Equipment. The Renewal Term with respect to each such Unit of Equipment will commence at the expiration of the Basic Term of such Unit. All of the provisions of this Lease shall be applicable during each Renewal Term for each such Unit of Equipment, except that, during the Renewal Term, Basic Rent shall be the fair market rental value thereof determined in accordance with Section 13(c) hereof, and said Basic Rent shall be payable quarterly in arrears during each Renewal Term, on the last day of each quarter. If Lessee intends to exercise the renewal option, Lessee shall give written notice to Lessor to such effect at least one hundred and twenty-five (125) days prior to the expiration of the Basic Term of the Unit(s) of Equipment whose Basic Term first expires hereunder, in the case of the Renewal Term, then Lessee shall give Lessor at

least ninety-five (95) days notice prior to the expiration of the then current Renewal Term of the Unit(s) of Equipment. If Lessee fails to give such written notice to Lessor with respect to any of said Renewal Terms, it shall be conclusively presumed that Lessee has elected not to exercise said renewal option with respect to said Renewal Term.

(b) Lessee's Purchase Option: If this Lease shall not have been earlier terminated, Lessee shall be entitled, at its option, upon written notice to Lessor, as hereinafter provided, to purchase any or all Units of Equipment then subject to this Lease, at the expiration of the Basic Term of each such Unit of Equipment or, as the case may be, at the expiration of the then Renewal Term of each such Unit of Equipment, payable in immediately available funds, equal to the fair market sales value thereof determined in accordance with Section 13(c) hereof, plus any applicable sales, excise or other taxes imposed as a result of such sale (other than gross or net income taxes attributable to such sale). Lessor's sale of each Unit of Equipment shall be on an as-is, where-is basis, without any representation by, or recourse or warranty to, Lessor. If Lessee intends to exercise said purchase option, Lessee shall give written notice to Lessor to such effect at least one hundred and twenty-five (125) days prior to the expiration of the Basic Term of the Unit(s) of Equipment whose Basic Term first expires hereunder, or, if Lessee has renewed this Lease pursuant to Section 13(a) hereof, then at least ninety-five (95) days prior to the expiration of the then current Renewal Term of the Unit(s) of Equipment. If Lessee fails to give such written notice to Lessor as aforesaid, it shall be conclusively presumed that Lessee has elected not to exercise said purchase option.

(c) Determination of Fair Market Rental Value
and Fair Market Sales Value:

Lessee has elected to exercise its renewal or purchase option, as provided in Section 13(a) and (b) hereof, then as soon as practicable following Lessor's receipt of the written notice from Lessee of Lessee's intent to exercise such option, Lessor and Lessee shall consult for the purpose of determining the fair market rent value or fair market sales value of each Unit of Equipment (as the case may be) as of the end of the Basic Term thereof, or, if this Lease has been renewed pursuant to Section 13(a) hereof, then as of the end of the then current Renewal Term thereof, and for purposes hereof the "fair market rental value" or the "fair market sales value" of the Equipment (as the case may be) shall be an amount mutually agreed to by Lessor and Lessee or, if Lessor and Lessee are unable to reach agreement within 30 days after either party has received notice from the other that a determination of "fair market rental value" or "fair market sales value" is required pursuant to the terms of their Agreement, the "fair market rental value" or the "fair market sales value" shall be determined on the basis of the average of the two (2) appraisals received from two independent appraisers, one chosen by

Lessor and the other by Lessee within 10 days after such 30 day period has ended or if only one party has chosen an appraiser within such 10 day period such "fair market rental value" or "fair market sales value" (as the case may be) shall be determined by such appraiser, or, if such appraiser cannot or fails to decide on the amount of such appraisal within 30 days of its appointment, such "fair market rental value" or "fair market sales value" (as the case may be) shall be determined using the one appraisal value submitted by the other appraiser. Such "fair market rental value" or "fair market sales value" shall be determined on the basis of, and shall be equal in amount to, the rental value or the sale value (as the case may be) of the Equipment, which would be obtained in an arm's-length transaction between an informed and willing lessor or seller (as the case may be), under no compulsion to lease or sell (as the case may be) and an informed and willing lessee or buyer under no compulsion to lease or buy (as the case may be) and in such determination costs of disconnection and removal from the plant shall not be a deduction from such value.

In addition the "fair market rental value" or the "fair market sales value" (as the case may be) of the Equipment shall be determined by excluding from the property appraised all replacements, upgrades and additions which may have been made to the Equipment by Lessee and which Lessee shall have the right to remove at the end of the term of this Lease and by including in the property appraised all parts which Lessee may be obligated to reinstall in the Equipment at the conclusion of the term. All costs and expenses of appraisal (including the fees and expenses of such appraisers) shall be shared equally by Lessee and Lessor.

Notwithstanding the final determination of the "fair market rental value" or the "fair market sales value" Lessee reserves its right to withdraw its right to renew its lease of the Equipment or its right to purchase the Equipment at the appraised value (as the case may be), within five (5) days of the final determination of the "fair market rental value" or the "fair market sales value" (as the case may be) and it shall then be conclusively presumed that this Lease will terminate at the expiration of the Term of the Unit(s) of Equipment.

Section 14. Return of Units Upon Expiration of Term.
Unless Lessee shall have purchased and paid or renewed the Term for the units pursuant to Section 13, then as soon as practicable on or after the expiration of the term of this Lease with respect to any Unit, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of such Unit to the Lessor upon appropriate storage tracks of the Lessee at a location or locations mutually agreeable to Lessor and Lessee, and permit the Lessor to store such Unit on such tracks for a period not exceeding 90 days following notification to the Lessor by the Lessee that all the Units have been assembled and delivered for storage (the "Storage Period") and transport the same, at any time within the Storage Period, to any reasonable place on the lines of railroad operated by the Lessee, or to any connecting carrier for shipment, all as directed by the Lessor. The movement and storage of such Units during the Storage Period to be at the expense and

risk of the Lessee (except for the insurance required by Section 7 hereof which shall be provided at the Lessor's expense) provided, however, that if the Lessor directs the Lessee to store the Units in a manner different from the normal storage practice of Lessee, the Lessor shall assume the risks and costs of such storage. In the event that any Unit shall suffer a Casualty Occurrence during such Storage Period, the Lessee shall pay the Lessor the Casualty Value thereof as provided in Section 7 hereof; provided, however, Lessee shall have no obligation to pay Lessor the Casualty Value for a Unit which suffers a Casualty Occurrence while being operated by Lessor or its agents during the Storage Period or which, at the specific direction of the Lessor is stored or operated in a manner different from the normal operational or storage practice of Lessee. During such Storage Period the Lessee will permit the Lessor or any person designated by it, including the authorized representatives of any prospective purchaser, lessee or user of such Unit, to inspect the same in a reasonable manner and consistent with current industry practice; provided, however, that the Lessee shall not be liable, except in the case of negligence or strict liability of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, on behalf of either the Lessor or any prospective purchaser, lessee or user, such rights of inspection. Each Unit returned to the Lessor pursuant to this Section 14 shall be in the condition required by the first paragraph of Section 7 hereof. During any storage period, the Lessee will, at its own expense, maintain and keep the Units in the condition required by the first paragraph of Section 7 hereof and will permit the Lessor or any person designated by it, including the authorized representatives of a prospective purchaser, lessee or user of any such Unit, to inspect the same in a reasonable manner consistent with current industry practice. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and, upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance thereof.

All rent and per diem charges earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 90 days after such termination, the Lessee shall, in addition, pay to the Lessor for each day from the date of such termination an amount which is 1/90th of the rental payment as contained in Schedule D.

Section 15. Recording. The Lessee, at Lessee's expense, will cause this Lease and any assignment hereof to be filed with the Interstate Commerce Commission in accordance with 49 U.S.C. §11303. The Lessee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor for the

purpose of proper protection, to its satisfaction, of the Lessor's rights in the Units, or for the purpose of carrying out the intention of this Lease, and the Lessee will promptly furnish to the Lessor evidence of all such filing, registering, depositing, recording and other acts which may be required under this Section 15, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Lessor.

Section 16. (a) Assumed Tax Consequences. This Lease has been entered into on the assumption that it will have the following tax consequences (herein referred to as "Assumed Tax Consequences"):

(i) The transaction will be treated as a lease for tax purposes. The Lessor will be treated as the owner and lessor of each Unit and the Lessee will be treated as lessee of each unit.

(ii) The Lessor shall be entitled to an investment tax credit in 1986 with respect to each unit pursuant to Section 38 and related sections of the Internal Revenue Code of 1954 as in effect as of the date of this Agreement (the "Code") in an amount equal to 10 percent of the Lessor's tax basis of such Unit (or 8% of the Lessor's tax basis if an election pursuant to Section 48(g) of the Code is made) (with respect to all Units, the "Investment Credit"), and there will be no recapture of the Investment Credit.

(iii) In the hands of the Lessor as of the date of delivery and acceptance of each unit, such unit will constitute (A) "recovery property" and "5-year property" within the meaning of Section 168 of the Code, and the Lessor will be entitled to the deductions allowed under Section 168 of the Code with respect to such Recovery Property (the "Cost Recovery Deductions") and (B) "new section 38 property" as defined in Section 48(b) of the Code.

(iv) The Lessor will be entitled to the Cost Recovery Deductions with respect to the full amount of the Lessor's tax basis for each of the units as reduced pursuant to Section 48(g) of the Code by 50% of the Investment Credit allowed to the Lessor with respect to the units; the full amount of the Cost Recovery Deductions will be allowed to the Lessor and there will be no recapture of the Cost Recovery Deductions by the Lessor.

(v) The amounts of interest payable on any debt incurred with respect to this transaction shall be deductible as interest by the Lessor in accordance with its method of accounting (the "Interest Deductions").

(vi) The Lessor shall be entitled to depreciate the units for state and local income tax purposes in the Lessor's home estate (the "State and Local Tax Benefits").

(vii) Alterations, improvements and additions to any unit by the Lessee will not result in any tax consequences to the Lessor.

(viii) All income and deductions with respect to the units will be from sources within the United States.

It being expressly agreed, however, that the Lessee does not warrant or represent the accuracy of any of the assumptions set forth in subparagraph (a) of this Paragraph.

(b) Lessee's Representations and Warranties. The Lessee represents and warrants for purposes of this paragraph that:

(i) the Lessee will not have done or caused any other person to have done anything to any of the Units of the Equipment so as to preclude "the original use of such property" within the meaning of Section 48(b) of the Code from commencing with the Lessor;

(ii) the Lessee will at all times during the Lease Term use or cause each of the Units to be used in a manner such that at all times the Units will constitute "Section 38 property" within the meaning of Section 48(a) of the Code;

(iii) the Lessee has not made any claim and will not make any claim predicated on tax or legal ownership of the Units, including but not limited to, a claim of the Cost Recovery Deductions, the Investment Credit, the Interest Deductions or the State and Local Tax Benefits;

(iv) at all times during the Lease Term the Lessee will not use nor permit the use of the Units in any taxable year of the Lessor "predominately outside the United States," within the meaning of Sections 168(f)(2) and 48(a)(2) of the Code;

(v) at all times during the Lease Term, the Lessee will not use nor permit the use of the Units outside the United States of America in such a manner as to affect the ability of the Lessor to treat, for Federal income tax purposes, each item of income, deduction and credit relating to all Units subject to the Lease as being derived from or allocable to, sources within the United States of America.

(vi) at all times during the term of the Lease Lessee will not permit Units (other than by government requisition) to become "tax-exempt use property" within the meaning of Section 168(j) of the Code.

(c) Indemnity. If solely and directly by reason of any act of commission or omission (including any acts of commission or omission permitted to be taken pursuant to the Lease),

misrepresentation, breach of any agreement, covenant, representation or warranty contained herein on the part of the Lessee, (i) the Lessor shall lose the right to claim or shall not claim (as the result of a good faith determination based upon the advice of independent tax counsel selected by the Lessor and approved by Lessee, which approval shall not be unreasonably withheld (hereinafter referred to as "Tax Counsel"), that there is no reasonable basis for making such claim and that the making of such a claim could expose the Lessor to a penalty or addition to tax under the Code, shall suffer a disallowance of, or shall be required to recapture all or any portion of the Investment Credit, the Cost Recovery Deductions, the Interest Deductions, or State and Local Tax Benefits or such benefits as are available to the Lessor only at later dates than assumed, or (ii) the Lessor shall suffer a disallowance of or be required to recapture an amount of foreign tax credit which would have been allowable to the Lessor if the Lessor had not participated in the transactions contemplated by the Lease (the "Foreign Tax Credit") (any of such events being a "Loss"), then the Lessee shall pay to the Lessor such amount or, from time to time, such amounts as, after deduction of all taxes required to be paid by the Lessor in respect to the receipt of such amounts shall be equal to the additional taxes, including penalties and interest, if any, payable by the Lessor from time to time as a result of any such Loss; provided that indemnification payments hereunder shall be an amount sufficient, on an after-tax basis, to preserve the Lessor's Net Economic Return plus, on an after-tax basis, an amount equal to any interest, additions to tax and/or penalties imposed as a result of the Loss which gave rise to indemnification hereunder. The Lessor's net after-tax economic and accounting yields and cash flows computed on the basis of such assumptions and the same method of accounting as were utilized by the Lessor in evaluating this transaction are herein called "Net Economic Return."

Upon the request of the Lessee, the Lessor will furnish to the Lessee a certificate of the Lessor's independent accountants, verifying that the amount of such indemnification payment is in effect an amount sufficient but not greater than the amount necessary, on an after-tax basis, to preserve the Lessor's Net Economic Return.

(d) Subsequent Benefit. If, as a result of any Loss for which indemnification is paid by the Lessee hereunder the aggregate Federal income taxes paid or accrued by the Lessor for any taxable year shall be less than the amount of such taxes which would have been payable by the Lessor had no such Loss occurred, and if such reduction in taxes was not taken into account in determining the amount of indemnification payable by the Lessee hereunder, then the Lessor will pay the Lessee the amount of such difference in taxes plus an amount equal to any additional reductions in tax realized by the Lessor as a result of such payment; provided, however, that the Lessor shall not be obligated to make any payment pursuant to this Section 16 (i) so long as the Lessee is in default or a condition exist nor has an event occurred which

with the lapse of time and/or the giving of notice would constitute a default under this Agreement, (ii) to the extent that such payment would cause the Lessor not to realize its Net Economic Return, or (iii) to the extent that such payment, together with all amounts previously paid by the Lessor, pursuant to this subsection (d) are in excess of all amounts previously paid by the Lessee with respect to such loss.

(e) Payment. All amounts payable to the Lessor hereunder shall be paid promptly and in immediately available funds and in any event within 15 days after receipt by the Lessee of a written demand therefor on the basis that the Lessor has paid or within 15 days expects to pay such amounts. Any payment due to the Lessee from the Lessor pursuant to this Section shall be paid promptly and in any event within 15 days after the Lessor realizes any reduction in its income or franchise taxes based upon net income.

(f) Limitations on Special Tax Indemnities. Notwithstanding anything to the contrary hereinbefore set forth, no amount shall be payable to the Lessor as an indemnity under this Paragraph in respect of any Loss to the extent that such Loss results from the occurrence of any of the following events:

(i) an involuntary transfer resulting from the bankruptcy or insolvency of the Lessor or any voluntary transfer or other voluntary disposition by the Lessor of any interest in any unit or any interest in the Lease other than a transfer or disposition pursuant to Section 10 or 11 of this Lease;

(ii) the failure of the Lessor to claim (unless Tax Counsel has advised that there is no reasonable basis for such claim and that the making of such claim is likely to expose the Lessor to a penalty or addition to tax under the Code) the Investment Credit, the Cost Recovery Deductions, the Foreign Tax Credits, the Interest Deductions or the State and Local Tax Benefits;

(iii) any negligence or misconduct of the Lessor or any other acts or omissions of the Lessor, inconsistent with the tax assumptions contemplated herein;

(iv) the failure of the Lessor to have sufficient liability for tax against which to credit the Investment Credit or to have sufficient income to benefit from the Cost Recovery Deductions or the Interest Deductions or to utilize the State and Local Tax Benefits, as the case may be;

(v) a Casualty Occurrence to the extent of the Casualty Value timely paid by the Lessee pursuant to Section 7 of the Lease; or

(vi) any changes in tax law occurring after the delivery and acceptance of a Unit under the Lease.

(g) Indemnity for Improvements. If at any time the Lessor is required to include in its gross income an amount in respect of any improvement or addition to the units or any accession referred to in Section 9 hereof ("Capital Expenditures") Lessee shall pay to the Lessor, as an indemnity, such amount or amounts as, after deduction of all taxes required to be paid by the Lessor in respect to the receipt of such amounts shall be equal to the additional taxes payable by the Lessor from time to time as a result of such Capital Expenditures plus the amount of any interest, penalties or additions to tax payable as a result of any such Capital Expenditures provided that indemnification payments hereunder shall be an amount sufficient so that, after considering the tax and other effects of the Capital Expenditures and the receipt of indemnification payments hereunder, shall preserve the Lessor's Net Economic Return. If as a result of any such Capital Expenditures the taxes paid by the Lessor for any taxable year shall be less than the amount of such taxes which would have been payable by the Lessor had not such Capital Expenditures been made, then the Lessor shall pay the Lessee the amount of such savings in taxes plus any additional tax benefits realized by the Lessor as the result of such payment; provided, however, that the Lessor shall not be obligated to make any payment pursuant to this sentence with respect to any Capital Expenditures (i) so long as the Lessee is currently in default or a condition exists or an event has occurred which with the lapse of time and/or the giving of notice would constitute a default under this Agreement, (ii) to the extent that any such payment would cause the Lessor not to realize its Net Economic Return or (iii) to the extent that such payment, together with all amounts previously paid by the Lessor to the Lessee pursuant to this subsection (g) with respect to such Capital Expenditure, are in excess of all amounts previously paid by the Lessee to the Lessor with respect to such Capital Expenditure.

(h) Contest of Disallowance of Tax Benefits. If a claim ("Claim") shall be made at any time which, if successful, would require the Lessee to indemnify the Lessor under this Section, the Lessor hereby agrees to take such action in connection with contesting such Claim as the Lessee shall reasonably request in writing from time to time; provided, however, that:

(i) within the earlier of 30 days or such applicable statutory period after notice by the Lessor to the Lessee of such Claim, the Lessee shall request in writing that such Claim be contested and shall acknowledge that such claim results from an event described in Paragraph 16(c) hereof, provided, however, that such acknowledgement shall not operate as a waiver of Lessee's defenses to indemnification under Paragraph 16(f);

(ii) the Lessor, at its sole option, may forego any and all administrative appeals, proceedings, hearings and

conferences with the Internal Revenue Service or such appropriate state tax authority with respect to such Claim and may, at its sole option, either pay the tax claimed and sue for a refund in the appropriate United States District Court or the United States Claims Court as the Lessor shall elect, or contest such Claim in the United States Tax Court; provided, however, that the Lessee shall have no obligation to indemnify the Lessor for any such Taxes, if as a result of the Lessor's foregoing any such administrative appeals, proceedings, hearings, or conferences, the Lessor shall lose the right to contest the merits of such impositions of levies;

(iii) prior to the Lessor's taking any such requested action, the Lessee at the Lessee's expense shall have furnished the Lessor in a timely manner with an opinion of independent tax counsel satisfactory to the Lessor to the effect that there exists a reasonable likelihood of the Lessor's prevailing on the merits in the contest of such Claim;

(iv) the Lessee shall have indemnified the Lessor in a manner satisfactory to the Lessor for any liability or loss directly related to such Claim which the Lessor may incur from time to time as the result of contesting such Claim and shall pay to the Lessor within 15 days after written demand therefor from time to time an amount which, on an after-tax basis, shall be equal to all costs and expenses which the Lessor may incur from time to time in connection with contesting or defending such Claim or any appeal thereof, including, without limitation, reasonable attorneys' and accountants' fees and disbursements, and the amount of any interest, additions to tax or penalties which may ultimately be payable as a result of contesting such Claim or appeal; and

(v) if the Lessor shall have elected hereunder to pay the tax claimed and then seek a refund, the Lessee will advance to the Lessor sufficient funds, on an interest-free basis, to pay the tax.

(i) Appeals. Notwithstanding any other obligation of the Lessor under this Section, the Lessor shall have no obligation to appeal any adverse trial or appellate court determination with respect to any Claim, unless:

(i) prior to the Lessor's making any such appeal, the Lessee shall, upon request by the Lessor, have furnished the Lessor with security, satisfactory to the Lessor, with respect to the Lessee's liability for indemnification under this Section 16 with respect to such Claim, together with at Lessee's expense a timely opinion of independent tax counsel satisfactory to the Lessor to the effect that there exists a reasonable likelihood of the Lessor prevailing on the merits of such appeal; and

(ii) with respect to any appeal of any appellate court determination, prior to the Lessor's making such appeal, the Lessee at its expense shall have timely furnished the Lessor with an opinion of independent tax counsel satisfactory to the Lessor to the effect that the likelihood of reversal of the adverse determination on appeal is substantially greater than the likelihood of affirmance.

(j) Deferral of Lessee's Liability. If any Claim shall be made and the Lessee shall have reasonably requested the Lessor to contest such Claim as above provided and shall have duly complied with all of the terms of subparagraph (h) of this Section, the Lessee's liability for indemnification hereunder (other than as provided in subparagraph (h)(iv) of this Section) shall be deferred until final determination of the liability of the Lessor. At such time the Lessee shall become obligated for the payment of any indemnification hereunder resulting from the outcome of such contest, and the Lessor shall become obligated to refund to the Lessee any amount received as a refund by the Lessor fairly attributable to advances by the Lessee hereunder, together with any interest received by the Lessor on such refund. Such obligations of the Lessor and the Lessee will first be set off against each other and any difference owing by either party shall be paid within 30 days after the later of (i) such final determination or (ii) in the case of a refund or credit, Lessor's receipt of such refund or credit.

(k) Notice and Cooperation. The Lessor agrees promptly to notify the Lessee in writing of any Claim and agrees not to make payment of the tax claimed or to consent to the assessment of any deficiency relating to such Claim for the earlier of (i) 30 days after the giving of such notice or (ii) the expiration of any statutory period for taking such action and agrees to give to the Lessee any relevant information relating to such Claim which may be peculiarly within the knowledge of the Lessor and otherwise to cooperate with the Lessee in good faith in order to contest any such Claim.

(l) Waiver of Indemnification Settlement. Nothing contained in this Section shall require the Lessor to contest any Claim if the Lessor shall waive the payment by the Lessee of any amount that might otherwise be payable by the Lessee under this Section by way of indemnity in respect of such Claim. The Lessor shall not enter into a settlement or other compromise with respect to any Claim without the prior written consent of the Lessee, unless (i) the Lessor shall have complied with its obligations to contest under this Section or (ii) the Lessor shall waive its right to be indemnified with respect to such Claim under this Section.

(m) Survival of Indemnities. The respective liabilities of the Lessee and the Lessor to make indemnification payments pursuant to this Section 16 shall, notwithstanding any expiration or termination of the Lease, continue to exist until such indemnity payments are made by the Lessee and the Lessor, respectively.

Section 17. Liens. Nothing contained in this Lease shall be construed to convey to, or create in Lessee any right, title or interest in or to the Equipment, except those rights and interests of a lessee. Lessee covenants that it shall not directly or indirectly create, incur, assume or suffer to exist any mortgage, lien, security interest, charge, encumbrance or claim (herein referred to as "Liens") on or with respect to the Equipment, title thereto or any interest therein; and Lessee will promptly at its own expense take such action as may be necessary to discharge any such Lien. Lessee shall not attach the Equipment to any real property so as to cause said Equipment to become a fixture thereto.

Section 18. Interest on Overdue Rentals. Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, an amount on the overdue rentals and other obligations for the period of time during which they are overdue at a rate per annum equal to 14% or such lesser amount as may be legally enforceable. Interest hereunder shall be determined on the basis of a 360-day year of twelve 30-day months.

Section 19. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been received by the addressee on the date of transmission, if by telex, or on the date of actual receipt, if by mail or by hand, if addressed as follows:

(a) if to the Lessor, at 40 Court Street, Boston, Massachusetts, 02108, Attention: Leasing Division; and

(b) if to the Lessee, at 1310 Six Penn Center Plaza, Philadelphia, Pennsylvania 19104, Attention of Assistant Treasurer-Financing;

or at such other address as either part shall have designated to the other party in writing.

Section 20. Severability; Effect and Modification of Lease. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability in any jurisdiction without invalidating the remaining provisions hereof and shall not invalidate or render unenforceable such provision in any other jurisdiction.

This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for the Lessor and the Lessee. This lease shall be binding upon and shall inure

to the benefit of the Lessee and the Lessor and their respective successors and assigns and legal representatives.

Section 21. Execution. This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Lessor shall be deemed to be the original and all other counterparts shall be deemed duplicates thereof. Although for convenience this Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgements hereto annexed.

Section 22. Law Governing. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Pennsylvania; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. §11303 and such additional rights arising out of the filing or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Lease or any assignment hereof shall be filed or deposited.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date first above written.

CONSOLIDATED RAIL CORPORATION

By

ASSISTANT TREASURER-FINANCING

[CORPORATE SEAL]

Attest:

Joan A. Gendge
Assistant Secretary

[CORPORATE SEAL]

UNITED STATES TRUST COMPANY

By

Tamara P. Davis
Senior Vice President

Attest:

Mavis L. Callahan
~~Assistant~~ Secretary

COMMONWEALTH OF PENNSYLVANIA)
)
COUNTY OF PHILADELPHIA)

SS.:

On this 30th day of January, 1986, before me personally appeared J. A. Warner, to me personally known, who, being by me duly sworn, says that he is Asst. Treasurer - Financing of CONSOLIDATED RAIL CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[Notarial Seal]

Marianne C. Baker
Notary Public

MARIANNE C. BAKER
Notary Public Phila., Phila. Co.
My Commission Expires Aug 4, 1990

STATE OF Massachusetts)
)
COUNTY OF Suffolk)

SS.:

On this 31st day of January, 1986, before me personally appeared Tamara P. Davis, to me personally known, who, being by me duly sworn, says that he is Senior Vice President of United States Trust Co. that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[Notarial Seal]

[Signature]
Notary Public
My Commission Expires May 23, 1991

Schedule A to LEASE

<u>Type</u>	<u>Quantity</u>	<u>Unit Cost</u>	<u>Total Cost</u>	<u>Lease Term</u>	<u>Vendor</u>
2 Man Spikers	10	\$ 77,195	\$ 771,950	5 yrs.	Eastern Rwy.
Scarifiers	4	60,000	240,000	5 yrs.	Fairmount
Rail Gang Spiker Puller	9	30,655	275,895	5 yrs.	Eastern (Rexnord)
Scrap Picker	1	87,006	87,006	5 yrs.	Holley Engr.
Tie Plate Loading Machine	1	82,725	82,725	5 yrs.	Holley Engr.
Tie Removers	6	104,804	628,824	5 yrs.	Portec
Ballast Regulators	4	184,142	736,568	5 yrs.	Plasser
Ballast Brooming Machines	5	65,512	327,560	5 yrs.	Tamper
Ballast Regulator	1	124,120	124,120	5 yrs.	Kershaw
Ballast Regulators	3	97,392	292,176	5 yrs.	Kershaw
Ballast Regulators	5	119,306	596,530	5 yrs.	Plasser
Material Handlers (Jimbo)	<u>8</u>	165,000	<u>1,320,000</u>	5 yrs.	Unknown
	57		\$5,483,354		

Schedule A to LEASE

<u>Type</u>	<u>Quantity</u>	<u>Unit Cost</u>	<u>Total Cost</u>	<u>Lease Term</u>	<u>Vendor</u>
Tie Inserters	4	\$ 94,000	\$ 376,000	7 yrs.	Loram
Tie Handlers	14	37,000	518,000	7 yrs.	Evans-RTW
Switch Tampers	<u>5</u>	186,921	<u>934,605</u>	7 yrs.	Plasser
	23		\$1,828,605		

Schedule A to LEASE

<u>Type</u>	<u>Quantity</u>	<u>Unit Cost</u>	<u>Total Cost</u>	<u>Lease Term</u>	<u>Vendor</u>
Rough Terrain Crane	2	\$144,500	\$289,000	10 yrs.	T. C. Johnson (Galion)
Dual Rail Laying Crane	<u>1</u>	186,592	<u>186,592</u>	10 yrs.	T. C. Johnson
	3		\$475,592		

Five Year Lease Term Equipment

SCHEDULE B

CASUALTY VALUES

The Casualty Value of each Unit shall be the percentage of the Purchase Price set forth below opposite the number of the Base Rental payment which would have become due to and including the next Base Rental payment date after the Casualty Occurrence. If the Casualty Occurrence takes place prior to the Lease Commencement Date, the Casualty Value shall be the percentage of the Purchase Price set forth opposite the first Base Rental payment number. If the Casualty Occurrence takes place after the last Base Rental payment date, the Casualty Value shall be the percentage of the Purchase Price set forth opposite such last Base Rental payment number.

<u>No. of Base Rental Payment</u>	<u>% of Purchase Price</u>	<u>No. of Base Rental Payment</u>	<u>% of Purchase Price</u>
1	117.58%		
2	114.68		
3	111.62		
4	106.02		
5	103.67		
6	101.18		
7	98.58		
8	92.45		
9	89.59		
10	86.60		
11	82.44		
12	74.78		
13	70.37		
14	65.84		
15	61.18		
16	53.00		
17	48.07		
18	43.01		
19	37.82		
20	30.26 or Fair Market Value, whichever is greater		

SCHEDULE BCASUALTY VALUES

The Casualty Value of each Unit shall be the percentage of the Purchase Price set forth below opposite the number of the Base Rental payment which would have become due to and including the next Base Rental payment date after the Casualty Occurrence. If the Casualty Occurrence takes place prior to the Lease Commencement Date, the Casualty Value shall be the percentage of the Purchase Price set forth opposite the first Base Rental payment number. If the Casualty Occurrence takes place after the last Base Rental payment date, the Casualty Value shall be the percentage of the Purchase Price set forth opposite such last Base Rental payment number.

<u>No. of Base Rental Payment</u>	<u>% of Purchase Price</u>	<u>No. of Base Rental Payment</u>	<u>% of Purchase Price</u>
1	117.89 %	15	84.07 %
2	116.28	16	80.91
3	115.35	17	74.26
4	114.26	18	70.90
5	109.63	19	67.44
6	108.24	20	63.89
7	106.71	21	56.91
8	105.06	22	53.27
9	99.89	23	49.57
10	98.01	24	45.81
11	96.06	25	42.00
12	94.03	26	38.13
13	88.53	27	34.20
14	86.34	28	27.76 or Fair Market Value, whichever is greater

Ten Year Lease Term Equipment

SCHEDULE B

CASUALTY VALUES

The Casualty Value of each Unit shall be the percentage of the Purchase Price set forth below opposite the number of the Base Rental payment which would have become due to and including the next Base Rental payment date after the Casualty Occurrence. If the Casualty Occurrence takes place prior to the Lease Commencement Date, the Casualty Value shall be the percentage of the Purchase Price set forth opposite the first Base Rental payment number. If the Casualty Occurrence takes place after the last Base Rental payment date, the Casualty Value shall be the percentage of the Purchase Price set forth opposite such last Base Rental payment number.

<u>No. of Base Rental Payment</u>	<u>% of Purchase Price</u>	<u>No. of Base Rental Payment</u>	<u>% of Purchase Price</u>
1	115.60 %	21	79.60 %
2	115.59	22	77.24
3	115.42	23	74.84
4	115.03	24	72.41
5	112.03	25	69.94
6	111.68	26	67.45
7	111.19	27	64.92
8	110.54	28	62.34
9	106.32	29	59.74
10	105.34	30	57.19
11	104.26	31	54.66
12	103.13	32	52.07
13	98.52	33	49.41
14	97.24	34	46.68
15	95.89	35	43.89
16	94.48	36	41.02
17	89.60	37	38.09
18	88.03	38	35.13
19	86.39	39	32.12
20	84.70	40	27.47 or Fair Market Value, whichever is greater.

SCHEDULE C TO LEASE

Certificate of Acceptance

To: United States Trust Company

I, the duly authorized representative for the Lessor and Consolidated Rail Corporation (the "Lessee") under the Lease of Railroad Equipment, dated as of January 30, 1986, do hereby certify that I inspected and accepted delivery thereunder of the following Units of Equipment:

TYPE OF EQUIPMENT:
MODEL:
DATE ACCEPTED:
NUMBER OF UNITS:
NUMBERED: CR
MANUFACTURER'S NUMBER:

I, do further certify that the foregoing Units are in good order and condition, and appear to conform to the specifications, requirements and standards applicable thereto as provided in the Lease.

The execution of this Certificate will in no way relieve or decrease the responsibility of the Builder named below for any warranties it has made with respect to the Equipment.

Authorized Representative of Lessee

BUILDER:

SCHEDULE D

RENTAL PAYMENTS

Basic Lease Rental shall commence on the first of the month following Equipment Acceptance and such Rental payments will be payable quarterly in arrears from the Basic Rent Commencement Date in an amount based upon the following.*

<u>Lease Term (Years)</u>	<u>Month of Acceptance</u>	<u>Rent Commencement Date</u>	<u>Base Rental Factor Per \$100.00 of Equipment Cost</u>
5	February	March 1, 1986	10 @ 4.65491 10 @ 5.68818
	March	April 1, 1986	10 @ 4.61311 10 @ 5.63711
	April	May 1, 1986	10 @ 4.57413 10 @ 5.58948
	May	June 1, 1986	10 @ 4.54388 10 @ 5.55251
7	February	March 1, 1986	14 @ 3.60956 14 @ 4.41079
	March	April 1, 1986	14 @ 3.58562 14 @ 4.38154
	April	May 1, 1986	14 @ 3.56372 14 @ 4.35478
10	April	May 1, 1986	20 @ 2.76663 20 @ 3.38076
	May	June 1, 1986	20 @ 2.75666 20 @ 3.36857

Interim Rental Rate: Daily Average Rental Rate from the date of acceptance to but not including the basic rent commencement date of the Basic Lease Rental Factor for equipment accepted during any monthly period.

Interim Rental shall be payable on the first day of the lease commencement term.

* The Basic Lease Rental may only be adjusted to reflect a tax law change enacted and effective prior to the delivery and acceptance of the Unit, however, should Lessee (in its sole opinion) find such adjusted Basic Lease Rental unacceptable, Lessee is under no obligation to lease such Unit and may terminate this Lease with respect to such Unit. Lessee shall thereupon purchase such Unit for the purchase price specified on the applicable Purchase Agreement.

Tamara P. Davis
Lessor

JAW
Lessee

Schedule E

<u>Purchase Order Number</u>	<u>Vendor</u>
7273395	Eastern Rwy.
7275812	Fairmount Rwy.
7273397	Eastern Rwy.
7275822	Holley Engr.
7275823	Holley Engr.
7275814	Portec
7275821	Plasser American
7275835	Tamper
7275834	Kershaw Mfg.
7275833	Kershaw Mfg.
7275832	Plasser American
7273398	Loram M of W
7273396	Evans - RTW
7275820	Plasser American
7273399	T. C. Johnson (Lake to Sea, Inc.)
7273400	T. C. Johnson (Lake to Sea, Inc.)